

ASSEMBLY BILL

No. 2780

Introduced by ~~Committee on Insurance (Solorio (Chair), Bradford, Carter, Feuer, Hayashi, Nava, and Torres)~~ Assembly Member Solorio

March 3, 2010

~~An act to amend Sections 674.9, 1874.86, and 12962 of the Insurance Code, relating to insurance. An act to amend, repeal, and add Section 138.7 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2780, as amended, ~~Committee on Insurance Solorio. Insurance: reporting requirements. Workers' compensation.~~

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law provides that a person or public or private entity who is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the Division of Workers' Compensation of the Department of Industrial Relations on that claim, except as specified.

This bill would, until January 1, 2017, authorize the State Department of Health Care Services to obtain and use individually identifiable information for the purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that

should have been incurred by employers and insurance carriers pursuant to workers' compensation law.

This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Existing law requires each insurer writing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly to report to the Insurance Commissioner specified information regarding liability policies for those facilities or physicians by a date to be set by the commissioner, but not later than July 1 of each calendar year.~~

~~This bill would instead require the report by a date set by the commissioner without restriction, except that the report shall be required not more than once each calendar year.~~

~~(2) Existing law requires each insurer that issues automobile liability or collision policies to report annually to the Department of Insurance regarding the number of vehicles inspected for which it has approved a claim for the cost of auto body repairs, the percentage that number represents of the total number of vehicles it paid an auto body repair claim in the prior calendar year, and the results of the inspection, including any fraud uncovered and whether any legal action was pursued.~~

~~This bill would make change the reporting requirement so that the report need only be submitted at the request of the commissioner and not more than annually.~~

~~(3) Existing law requires the commissioner to report annually to the Governor, the Legislature, and the committees of the Senate and Assembly having jurisdiction over insurance an analysis of information, including, but not limited to, certain medical malpractice insurance statistics reported by insurers upon the request of the commissioner.~~

~~This bill would eliminate the analysis of information from medical malpractice insurance statistical reports from the commissioner's annual report and would eliminate an obsolete reference.~~

Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 138.7 of the Labor Code is amended to*
2 *read:*

3 138.7. (a) Except as expressly permitted in subdivision (b), a
4 person or public or private entity not a party to a claim for workers'
5 compensation benefits may not obtain individually identifiable
6 information obtained or maintained by the division on that claim.
7 For purposes of this section, "individually identifiable information"
8 means any data concerning an injury or claim that is linked to a
9 uniquely identifiable employee, employer, claims administrator,
10 or any other person or entity.

11 (b) (1) The administrative director, or a statistical agent
12 designated by the administrative director, may use individually
13 identifiable information for purposes of creating and maintaining
14 the workers' compensation information system as specified in
15 Section 138.6.

16 (2) (A) The State Department of *Public Health-Services* may
17 use individually identifiable information for purposes of
18 establishing and maintaining a program on occupational health
19 and occupational disease prevention as specified in Section 105175
20 of the Health and Safety Code.

21 (B) (i) *The State Department of Health Care Services may use*
22 *individually identifiable information for purposes of seeking*
23 *recovery of Medi-Cal costs incurred by the state for treatment*
24 *provided to injured workers that should have been incurred by*
25 *employers and insurance carriers pursuant to workers'*
26 *compensation law.*

27 (ii) *The Department of Industrial Relations shall furnish*
28 *individually identifiable information to the State Department of*
29 *Health Care Services, and the State Department of Health Care*
30 *Services shall furnish the information to its designated agent,*
31 *provided that the individually identifiable information shall not*
32 *be disclosed for use other than the purposes described in clause*
33 *(i). The administrative director may adopt regulations governing*
34 *access to the individually identifiable information and its uses by*
35 *the department and its designated agents.*

36 (3) (A) Individually identifiable information may be used by
37 the Division of Workers' Compensation, the Division of
38 Occupational Safety and Health, and the Division of Labor

1 Statistics and Research as necessary to carry out their duties. The
2 administrative director shall adopt regulations governing the access
3 to the information described in this subdivision by these divisions.
4 Any regulations adopted pursuant to this subdivision shall set forth
5 the specific uses for which this information may be obtained.

6 (B) Individually identifiable information maintained in the
7 workers' compensation information system and the Division of
8 Workers' Compensation may be used by researchers employed by
9 or under contract to the Commission on Health and Safety and
10 Workers' Compensation as necessary to carry out the commission's
11 research. The administrative director shall adopt regulations
12 governing the access to the information described in this
13 subdivision by commission researchers. These regulations shall
14 set forth the specific uses for which this information may be
15 obtained and include provisions guaranteeing the confidentiality
16 of individually identifiable information. Individually identifiable
17 information obtained under this subdivision shall not be disclosed
18 to commission members. No individually identifiable information
19 obtained by researchers under contract to the commission pursuant
20 to this subparagraph may be disclosed to any other person or entity,
21 public or private, for a use other than that research project for
22 which the information was obtained. Within a reasonable period
23 of time after the research for which the information was obtained
24 has been completed, the data collected shall be modified in a
25 manner so that the subjects cannot be identified, directly or through
26 identifiers linked to the subjects.

27 (4) The administrative director shall adopt regulations allowing
28 reasonable access to individually identifiable information by other
29 persons or public or private entities for the purpose of bona fide
30 statistical research. This research shall not divulge individually
31 identifiable information concerning a particular employee,
32 employer, claims administrator, or any other person or entity. The
33 regulations adopted pursuant to this paragraph shall include
34 provisions guaranteeing the confidentiality of individually
35 identifiable information. Within a reasonable period of time after
36 the research for which the information was obtained has been
37 completed, the data collected shall be modified in a manner so that
38 the subjects cannot be identified, directly or through identifiers
39 linked to the subjects.

1 (5) This section shall not operate to exempt from disclosure any
2 information that is considered to be a public record pursuant to
3 the California Public Records Act (Chapter 3.5 (commencing with
4 Section 6250) of Division 7 of Title 1 of the Government Code)
5 contained in an individual's file once an application for
6 adjudication has been filed pursuant to Section 5501.5.

7 However, individually identifiable information shall not be
8 provided to any person or public or private entity who is not a
9 party to the claim unless that person identifies himself or herself
10 or that public or private entity identifies itself and states the reason
11 for making the request. The administrative director may require
12 the person or public or private entity making the request to produce
13 information to verify that the name and address of the requester
14 is valid and correct. If the purpose of the request is related to
15 preemployment screening, the administrative director shall notify
16 the person about whom the information is requested that the
17 information was provided and shall include the following in
18 12-point type:

19 "IT MAY BE A VIOLATION OF FEDERAL AND STATE
20 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
21 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
22 WORKERS' COMPENSATION BENEFITS."

23 Any residence address is confidential and shall not be disclosed
24 to any person or public or private entity except to a party to the
25 claim, a law enforcement agency, an office of a district attorney,
26 any person for a journalistic purpose, or other governmental
27 agency.

28 Nothing in this paragraph shall be construed to prohibit the use
29 of individually identifiable information for purposes of identifying
30 bona fide lien claimants.

31 (c) Except as provided in subdivision (b), individually
32 identifiable information obtained by the division is privileged and
33 is not subject to subpoena in a civil proceeding unless, after
34 reasonable notice to the division and a hearing, a court determines
35 that the public interest and the intent of this section will not be
36 jeopardized by disclosure of the information. This section shall
37 not operate to restrict access to information by any law enforcement
38 agency or district attorney's office or to limit admissibility of that
39 information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 2. Section 138.7 is added to the Labor Code, to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Public Health may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's

1 research. The administrative director shall adopt regulations
2 governing the access to the information described in this
3 subdivision by commission researchers. These regulations shall
4 set forth the specific uses for which this information may be
5 obtained and include provisions guaranteeing the confidentiality
6 of individually identifiable information. Individually identifiable
7 information obtained under this subdivision shall not be disclosed
8 to commission members. No individually identifiable information
9 obtained by researchers under contract to the commission pursuant
10 to this subparagraph may be disclosed to any other person or
11 entity, public or private, for a use other than that research project
12 for which the information was obtained. Within a reasonable period
13 of time after the research for which the information was obtained
14 has been completed, the data collected shall be modified in a
15 manner so that the subjects cannot be identified, directly or through
16 identifiers linked to the subjects.

17 (4) The administrative director shall adopt regulations allowing
18 reasonable access to individually identifiable information by other
19 persons or public or private entities for the purpose of bona fide
20 statistical research. This research shall not divulge individually
21 identifiable information concerning a particular employee,
22 employer, claims administrator, or any other person or entity. The
23 regulations adopted pursuant to this paragraph shall include
24 provisions guaranteeing the confidentiality of individually
25 identifiable information. Within a reasonable period of time after
26 the research for which the information was obtained has been
27 completed, the data collected shall be modified in a manner so
28 that the subjects cannot be identified, directly or through identifiers
29 linked to the subjects.

30 (5) This section shall not operate to exempt from disclosure any
31 information that is considered to be a public record pursuant to
32 the California Public Records Act (Chapter 3.5 (commencing with
33 Section 6250) of Division 7 of Title 1 of the Government Code)
34 contained in an individual's file once an application for
35 adjudication has been filed pursuant to Section 5501.5.

36 However, individually identifiable information shall not be
37 provided to any person or public or private entity who is not a
38 party to the claim unless that person identifies himself or herself
39 or that public or private entity identifies itself and states the reason
40 for making the request. The administrative director may require

1 *the person or public or private entity making the request to produce*
2 *information to verify that the name and address of the requester*
3 *is valid and correct. If the purpose of the request is related to*
4 *preemployment screening, the administrative director shall notify*
5 *the person about whom the information is requested that the*
6 *information was provided and shall include the following in*
7 *12-point type:*

8 *“IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW*
9 *TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE*
10 *THE APPLICANT HAS FILED A CLAIM FOR WORKERS’*
11 *COMPENSATION BENEFITS.”*

12 *Any residence address is confidential and shall not be disclosed*
13 *to any person or public or private entity except to a party to the*
14 *claim, a law enforcement agency, an office of a district attorney,*
15 *any person for a journalistic purpose, or other governmental*
16 *agency.*

17 *Nothing in this paragraph shall be construed to prohibit the use*
18 *of individually identifiable information for purposes of identifying*
19 *bona fide lien claimants.*

20 *(c) Except as provided in subdivision (b), individually*
21 *identifiable information obtained by the division is privileged and*
22 *is not subject to subpoena in a civil proceeding unless, after*
23 *reasonable notice to the division and a hearing, a court determines*
24 *that the public interest and the intent of this section will not be*
25 *jeopardized by disclosure of the information. This section shall*
26 *not operate to restrict access to information by any law*
27 *enforcement agency or district attorney’s office or to limit*
28 *admissibility of that information in a criminal proceeding.*

29 *(d) It shall be unlawful for any person who has received*
30 *individually identifiable information from the division pursuant*
31 *to this section to provide that information to any person who is*
32 *not entitled to it under this section.*

33 *(e) This section shall become operative on January 1, 2017.*

34 *SEC. 3. This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

38 *In order for state agencies to, at the earliest possible time, share*
39 *information that will increase the amount of monetary recoveries*

1 *by the state of Medi-Cal costs, it is necessary that this act take*
2 *effect immediately.*

3 **SECTION 1.** ~~Section 674.9 of the Insurance Code is amended~~
4 ~~to read:~~

5 ~~674.9. (a) Notwithstanding subdivision (b) of Section 674.6,~~
6 ~~an insurer issuing policies of liability insurance to long-term health~~
7 ~~care facilities, residential care facilities for the elderly, or~~
8 ~~physicians who provide or oversee the provision of services to~~
9 ~~residents in long-term health care facilities or residential care~~
10 ~~facilities for the elderly shall notify the department at least 90 days~~
11 ~~prior to the date it intends to cease, withdraw, or substantially~~
12 ~~withdraw from offering liability policies to those facilities or~~
13 ~~physicians.~~

14 ~~(b) Each insurer writing liability insurance for long-term health~~
15 ~~care facilities, residential care facilities for the elderly, or~~
16 ~~physicians who provide or oversee the provision of services to~~
17 ~~residents in long-term health care facilities or residential care~~
18 ~~facilities for the elderly shall, by a date to be set by the~~
19 ~~commissioner, but not more than once each calendar year, report~~
20 ~~to the commissioner information specified by him or her regarding~~
21 ~~liability policies for those facilities or physicians. The information~~
22 ~~shall include, but not be limited to, the following:~~

23 ~~(1) Whether the insurer is writing coverage for long-term health~~
24 ~~care facilities, residential care facilities for the elderly, or~~
25 ~~physicians who provide or oversee the provision of services to~~
26 ~~residents in long-term health care facilities or residential care~~
27 ~~facilities for the elderly, including new and renewal policies, and~~
28 ~~the types of policies it is writing.~~

29 ~~(2) The number and types of long-term health care facilities or~~
30 ~~residential care facilities for the elderly and beds covered.~~

31 ~~(3) The total amount of premiums from insureds, both written~~
32 ~~and earned, during the immediately preceding five calendar years.~~

33 ~~(4) The total number of claims received, including the amount~~
34 ~~per claim.~~

35 ~~(5) The number of claims incurred, together with the monetary~~
36 ~~amount reserved for loss and defense and cost containment expense~~
37 ~~for the immediately preceding accident year or report year.~~

38 ~~(6) The number of claims closed with payment during the~~
39 ~~immediately preceding five calendar years, the total monetary~~
40 ~~amount paid for loss thereon, reported by the year the claim was~~

1 incurred, and the total defense and cost containment expense paid
2 thereon, reported by the year the claim was incurred.

3 ~~(7) The monetary amount paid on claims, including the amount~~
4 ~~paid per claim, during the immediately preceding five calendar~~
5 ~~years to be reported separately by the year the claim was incurred,~~
6 ~~with defense and cost containment expense paid.~~

7 ~~(8) The number of claims closed without payment during the~~
8 ~~immediately preceding five calendar years, reported by the year~~
9 ~~the claim was incurred, and the defense and cost containment~~
10 ~~expense paid thereon.~~

11 ~~(9) The monetary amount reserved in the annual statement for~~
12 ~~loss and defense cost containment expense for the immediately~~
13 ~~preceding calendar year for outstanding claims incurred but not~~
14 ~~reported to the insurer.~~

15 ~~(10) The number and types of lawsuits filed against the insureds~~
16 ~~in the immediately preceding calendar year.~~

17 ~~(11) Annualized information on investment income or loss, that~~
18 ~~shall be consistent with the reported information provided by~~
19 ~~insurers to the National Association of Insurance Commissioners.~~

20 ~~(e) For the purposes of information collection conducted~~
21 ~~pursuant to this section, first priority shall be given by the~~
22 ~~department and commissioner to collecting and compiling~~
23 ~~information from insurers concerning long-term health care~~
24 ~~facilities and physicians providing services in those facilities, and,~~
25 ~~to the extent that departmental resources allow, secondary priority~~
26 ~~shall then be given to the collecting and compiling of information~~
27 ~~concerning residential care facilities for the elderly and the~~
28 ~~physicians who provide services in those facilities.~~

29 ~~(d) Information that is collected for long-term health care~~
30 ~~facilities and the physicians for those facilities shall be collected,~~
31 ~~maintained, analyzed, and reported separately from information~~
32 ~~that is collected, maintained, analyzed, and reported concerning~~
33 ~~residential care facilities for the elderly, and the physicians for~~
34 ~~those facilities.~~

35 ~~(e) As used in this section, “long-term health care facility” has~~
36 ~~the same meaning as that term is defined in Section 1418 of the~~
37 ~~Health and Safety Code.~~

38 ~~(f) As used in this section, “residential care facilities for the~~
39 ~~elderly” has the same meaning as that term is defined in Section~~
40 ~~1569.2 of the Health and Safety Code.~~

1 ~~(g) Information collected by the department pursuant to this~~
2 ~~section shall be deemed official information and subject to the~~
3 ~~disclosure protections of Section 1040 of the Evidence Code.~~
4 ~~Nothing in this section shall require individualized information~~
5 ~~that would identify the amount paid by a specific insurer or facility~~
6 ~~to be released. However, nothing in this subdivision shall prevent~~
7 ~~the department from preparing reports and policy recommendations~~
8 ~~based on the data collected pursuant to this section.~~

9 ~~SEC. 2. Section 1874.86 of the Insurance Code is amended to~~
10 ~~read:~~

11 ~~1874.86. Each insurer subject to this article shall report, at the~~
12 ~~request of the commissioner, but not more than annually, to the~~
13 ~~department on the following:~~

14 ~~(a) The number of vehicles inspected pursuant to Section~~
15 ~~1874.85 and the percentage that this number represents of the total~~
16 ~~number of vehicles for which it paid a claim for the cost of auto~~
17 ~~body repairs in the prior calendar year.~~

18 ~~(b) The results of the inspections, including the nature of any~~
19 ~~fraud uncovered, and whether or not legal action was pursued.~~

20 ~~The department shall make the information provided pursuant~~
21 ~~to this section available to the California Highway Patrol and the~~
22 ~~Bureau of Automotive Repair.~~

23 ~~SEC. 3. Section 12962 of the Insurance Code is amended to~~
24 ~~read:~~

25 ~~12962. The commissioner shall report to the Governor, the~~
26 ~~Legislature, and to the committees of the Senate and Assembly~~
27 ~~having jurisdiction over insurance all of the following in the annual~~
28 ~~report submitted pursuant to Section 12922:~~

29 ~~(a) An analysis of the information required by Sections 674.5,~~
30 ~~1857.7, 1857.9, 1864, and 12963, including, but not limited to, all~~
31 ~~of the following:~~

32 ~~(1) An aggregate and an average for all insurers for each item~~
33 ~~of information required by these sections.~~

34 ~~(2) The number of insurers reporting policies written for each~~
35 ~~class during the calendar year.~~

36 ~~(3) For each class, the number of insurers reporting a combined~~
37 ~~loss ratio of 100 percent or more, and the number reporting a~~
38 ~~combined loss ratio of under 100 percent.~~

39 ~~(4) An analysis of adjustments made to loss reserves for prior~~
40 ~~years.~~

1 ~~(5) The change in any item required to be included by~~
2 ~~paragraphs (1) to (4), inclusive, from the immediately prior year.~~

3 ~~(b) An analysis of the activities of the Department of Insurance~~
4 ~~in implementing the provisions of Proposition 103 on the~~
5 ~~November 8, 1988, general election ballot, as set forth in Article~~
6 ~~10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of~~
7 ~~Division 1.~~

8 ~~(c) Recommendations and proposals, including suggested~~
9 ~~legislation, to protect consumers from arbitrary insurance rates~~
10 ~~and practices, to encourage a competitive insurance marketplace,~~
11 ~~to provide for an accountable Insurance Commissioner, and to~~
12 ~~ensure that insurance is fair, available, and affordable for all~~
13 ~~Californians.~~

14 ~~(d) The requirements of this section shall be satisfied if the~~
15 ~~analysis required by this section is included in the annual report~~
16 ~~to the Governor required by Section 12922, and a copy of that~~
17 ~~report is provided to the Legislature.~~